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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CHARLES DANIEL STODDART, Defendant and Appellant.	G033383 (Super. Ct. No. 03HF0204) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Ronald P. Kreber, Judge. Affirmed.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Karl T. Terp, Marvin E. Mizell and Robert M. Foster, Deputy Attorneys General, for Plaintiff and Respondent.

Charles Stoddart was convicted of willfully failing to register as a sex offender pursuant to Penal Code section 290.[1] He argues section 290 is unduly vague, there is insufficient evidence to support his conviction, the trial court erred in failing to instruct on CALJIC No. 17.01, and his conviction should be reduced to a misdemeanor. Finding no basis to disturb the judgment, we affirm.

* * *

As a convicted sex offender, Stoddart was required to register with authorities under the terms of section 290. During 2000 and 2001, he registered as a transient four times in San Bernardino County. He also registered in Orange County in August 2001. He did not register anywhere between May 25, 2002 and February 6, 2003, the period in question.

Although the record does not disclose Stoddart's exact whereabouts during this time frame, certain facts are undisputed: On April 2, 2002, he vacated his apartment in Aliso Viejo; on May 15, 2002, he renewed his driver's license at the DMV in San Clemente; on September 30, 2002, someone paid his driver's registration fee at that DMV; and on May 13, 2003, the date of his preliminary hearing, he was seen outside the courthouse in his car.

Timothy Taggart, a long-time friend of Stoddart, testified he helped Stoddart compose a letter in March 2002. The letter was designed to inform authorities Stoddart was leaving his Orange County apartment and would be living out of his car. The letter also stated Stoddart expected to spend much of his time outside California. Taggart testified he mailed the letter to the Orange County Sheriff's Department, but the sheriff's investigator assigned to monitor Stoddart testified he did not receive any documentation concerning Stoddart's move.

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[1] All statutory references are to the Penal Code and all subdivision references are to section 290.

Following the move in April 2002, Taggart said he saw Stoddart about two or three times a week. Sometimes they worked out together and sometimes Stoddart stayed with Taggart at his house in San Bernardino. Taggart said their goal was to work out three times a week, but they rarely made it to the gym that often. According to Taggart, Stoddart worked odd jobs at various locations. He said Stoddart stayed with him for about a month in the fall of 2002, while Stoddart was working in San Bernardino. However, following a recess in the trial during which he spoke to Stoddart, Taggart changed his story and said this job ended in April 2002, before the period in question.

Taggart also testified Stoddart worked in Northern California for about three days in the summer of 2002. Taggart believes Stoddart returned to Southern California after that because he is "addicted to surfing." He said that on the days he and Stoddart did not go to the gym, Stoddart was either surfing or looking for work. Taggart testified Stoddart also traveled out of state once or twice a month. He said Stoddart's wife and youngest child live in Utah, his mother lives in Arizona, and he has friends in Nevada.

Nevada resident Stacy Lawrence testified Stoddart stayed with her and her husband a couple days a month. She said Stoddart helped out with jobs around her house and appeared to be living out of his car. In August 2002, Stoddart attended a wedding reception for Taggart's stepdaughter in San Bernardino. He was arrested there in March 2003, after he and Taggart attended church. Prior to that time, he had been staying with Taggart for a couple of days.

The prosecutor put forth three theories as to why Stoddart was guilty of violating section 290: (1) he failed to register within five days of coming into or changing his location within a city or county; (2) he failed to update his registration every 90 days; and (3) he failed to register within five days of his birthday. (See § 290, subd. (a)(1)(A), (C) & (D).)

Focusing on Stoddart's past registration efforts and his letter to the Sheriff's department in March 2002, defense counsel argued Stoddart had no intent to ditch the system and would have complied with section 290's registration requirements had he known how to do so. Defense counsel assailed the statute as vague and confusing and claimed Stoddart simply did not understand what it required of him. The jury returned a general verdict, finding Stoddart failed to register under section 290.

I

Stoddart contends section 290 is unconstitutional as applied to transient sex offenders. While certain aspects of the statute have been found to be unduly vague, those provisions have no bearing in this case. And since we find no infirmity in the statute as applied to Stoddart, we uphold its validity.

Section 290 is designed to allow the police to keep tabs on sex offenders. (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 527.) To that end, subdivision (a)(1)(A) provides, "Every person [who has a qualifying prior conviction], for the rest of his or her life while residing in, or, if he or she has no residence, while located within California . . . shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located . . . within five working days of coming into, or changing his or her residence or location within, any city . . . in which he or she temporarily resides, or, if he or she has no residence, is located."

Subdivision (a)(1)(C) states, "If the person who is registering has no residence address, he or she shall update his registration no less than once every 60 days in addition to the requirement in subparagraph (A) . . . with the entity or entities described in subparagraph (A) in whose jurisdiction he or she is located at the time he or she is updating the registration."[2]

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[2] The updating period in subdivision (a)(1)(C) was shortened from 90 to 60 days in 2001. (Stats. 2001, ch. 843, § 1.3, p. 5369.) Nonetheless, the prosecutor proceeded on the theory Stoddart was required to update his registration every 90 days.

Subdivision (a)(1)(D) adds the additional requirement that "[b]eginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information in subparagraphs (A) to (C) . . . ."

In *People v. North* (2003) 112 Cal.App.4th 621, the court ruled that some provisions of section 290 are unconstitutionally vague with respect to sex "offenders who change status from resident to transient." (*Id*. at p. 635.) The court was particularly troubled by the statute's use of the term "location." Finding it to be vague and overbroad, the court determined the term failed to provide sufficient guidance as to "which locations within the jurisdiction must be separately identified, or when movement within the jurisdiction constitutes a change of location." (*Id*. at p. 634.)

That led the *North* court to hold, "The provisions of section 290, subdivisions (a)(1)(A) and (f)(1) requiring reregistration and written notification upon a change of 'location' are void for vagueness, as is the subdivision (a)(1)(B) requirement that a transient offender specify all the places where he is regularly located within a jurisdiction. Also void is the provision of section 290, subdivision (a)(1)(D) requiring annual verification of a transient offender's 'temporary location.'" (*People v. North, supra*, 112 Cal.App.4th at p. 634.)[3]

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[3] At the time *North* was decided, subdivision (f)(1) stated, "If any person who is required to register pursuant to this section changes his or her residence address or location, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, the person shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location." (*People v. North, supra*, 112 Cal.App.4th at p. 630.)

Subdivision (a)(1)(D) provided, "Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A), including, verifying his or her name and address, or *temporary location* . . . ." (*People v. North, supra*, 112 Cal.App.4th at p. 630.)

As the Attorney General points out, subdivision (a)(1)(D) no longer contains the term "temporary location." (See *ante,* p. 5.) However, it does require the registrant to provide all the information that is required under subparagraphs (A) through (C), and subparagraph (B) requires a transient offender to divulge all the "locations" in which he or she is located within a particular jurisdiction. (§ 290, subd. (a)(1)(B.) That brings the location argument into full focus under subdivision (a)(1)(D). As explained, the *North* court also struck down subdivision (a)(1)(A) to the extent it requires transients to report every change in their location. As the court reasoned, "[T]he registration of every particular location at which an offender is regularly present is not feasible, and even in theory would lead to multiple and often meaningless registrations. A transient offender may occupy many locations on a more or less regular basis during the course of a day, week, or month. Section 290 provides no hint as to which locations the offender must provide to the police for purposes of facilitating surveillance." (*People v. North, supra*, 112 Cal.App.4th at p. 633.)

Still, the *North* court drew an important distinction in rendering its decision. Although, it found the term location to be unworkable, it noted "the Legislature used [the term] 'located' as a basis for identifying the jurisdictions in which registration is required." (*People v. North, supra*, 112 Cal.App.4th at p. 634.) The court observed, "It is possible to ascertain when a transient offender is within a jurisdiction" for reporting purposes. (*Ibid*.) Using the five-day grace period for registration as a point of reference, the court determined "an offender is 'located' in a jurisdiction for purposes of registration when he is present in the jurisdiction on five consecutive working days. He has five working days from the time he first 'comes into' a jurisdiction to register as a transient, if he is in the jurisdiction on each of those days. (§ 290, subd. (a)(1)(A).)" (*People v. North, supra*, 112 Cal.App.4th at pp. 634-635.)

Construing the statute in this light, the *North* court not only found the basic registration requirement in subdivision (a)(1)(A) to be valid with respect to transient

offenders, it found all of the registration requirements in section 290 "pass muster under the vagueness doctrine, so long as transient offenders are not required to provide the authorities with statutorily unspecified 'locations.'" (*People v. North, supra*, 112 Cal.App.4th at p. 635.)

Unlike the defendant in *North*, Stoddart was not prosecuted for failing to provide authorities with information pertaining to the various locations he occupied through the course of his travels. Rather, he was prosecuted for failing to register in *any jurisdiction* in which he spent five consecutive days, as required under subdivision (a)(1)(A), and failing to update his registration in *any jurisdiction* every 90 days and on his birthday, as required by subdivisions (a)(1)(C) and (D). For the reasons explained in *North*, those requirements are not unduly vague with respect to transient offenders such as Stoddart. We therefore reject his challenge to the constitutionality of section 290.

II

Stoddart also claims there is insufficient evidence to support his conviction for violating section 290. We disagree.

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence — that is, evidence that is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.]" (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

Regarding subdivision (a)(1)(A), Stoddart claims there is insufficient evidence he was ever in one jurisdiction for five consecutive days during the period of question. However, Taggart testified Stoddart spent about a month at his house in the fall of 2002. While Taggart latter testified the stay occurred in April 2002, this was after he spoke to Stoddart about the issue. Considering the fact that Stoddart and Taggart are very

close friends, the jury could reasonably believe Taggart was trying to tailor his testimony for Stoddart's benefit. Furthermore, the evidence circumstantially established Stoddart spent a lot of time in California. He not only worked and registered his car here, he loved to surf in Orange County and exercise with Taggart in Riverside. And the evidence placed him out of state for only a couple days a month. Viewing the record in the light most favorable to the judgment, we cannot say the evidence supporting the jury's conclusion he was in California for five consecutive days during the period in question was insubstantial.

Stoddart also argues there is insufficient evidence he violated subdivision (a)(1)(C) by failing to update his registration every 60 days. His argument is premised on the assumption that subdivision requires the defendant to be in California for 60 consecutive days. Actually, though, it simply calls for transient offenders to register every 60 days. While it does not apply while the defendant is residing out of state (*People v. Franklin* (1999) 20 Cal.4th 249, 254-255), it does not require him to be in California for 60 days in a row. Given Taggart's testimony about how often Stoddart was in California, there is substantial evidence that Stoddart violated subdivision (a)(1)(C).

Stoddart also puts an interesting twist on the annual registration requirement set forth in subdivision (a)(1)(D), arguing it requires proof he was in California on his birthday. But there is nothing in the statute that supports this interpretation. In fact, section 290 provides that "[a]ny person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense." (§ 290, subd. (g)(8).) Therefore it doesn't matter whether Stoddart was in California on his birthday so long as he was in the state *after* his birthday. The fact he failed to register within five working days of his birthday is sufficient to justify his conviction under subdivision (a)(1)(D).

Because there is ample evidence to support Stoddart's conviction under all three theories offered by the prosecution, we need not speculate as to whether the jury

rested its verdict on an invalid theory. All three theories were legally sound and supported by substantial evidence.

III

Stoddart also contends the trial court had a sua sponte duty to instruct the jurors per CALJIC No. 17.01 that in order to find him guilty, they had to unanimously agree on the act or acts that constituted a violation of section 290. Even if Stoddart is correct about this, we do not believe the court's failure to give CALJIC No. 17 was prejudicial.

"Under CALJIC No. 17.01 and related case law in the criminal area, jurors must agree unanimously on the same act on which a criminal offense is based if there exist multiple acts on which separate criminal offenses could be based." (*Stoner v. Williams* (1996) 46 Cal.App.4th 986, 997, fn. omitted.) In *People v. Meeks* (2004) 123 Cal.App.4th 695, the court determined a sex offender's failure to register within five days of changing his address (§ 290, subd. (a)(1)(A)) was a separate offense from his failure to register within five days of his birthday (§ 290, subd. (a)(1)(D)). Thus, the court ruled he could be convicted of and punished for both transgressions. (*People v. Meeks, supra*, 123 Cal.App.4th at pp. 702-706.)

Fortunately for Stoddart, he was not charged with multiple counts in this case. However, under the reasoning of *Meeks*, his alleged violation of section 290 was based on multiple acts (or, more precisely, omissions) that could have been charged as separate offenses, thus triggering the court's duty to give CALJIC No. 17.01. But that does not end our analysis of the issue. "Where the record indicates the jury resolved the basic credibility dispute against the defendant and therefore would have convicted him of any of the various offenses shown by the evidence, the failure to give the unanimity instruction is harmless. [Citation.]" (*People v. Thompson* (1995) 36 Cal.App.4th 843, 853.)

Stoddart did not tailor his defense to the prosecution's specific theories of culpability. Rather, his attorney offered the blanket defense of lack of intent. Simply put, the defense claimed Stoddart never willfully violated section 290 because he did not understand what the statute required of him. The jury's verdict indicates it resolved this basic credibility dispute against Stoddart and rejected his contention he lacked the intent to violate the statute. That means they would have convicted him on any one of the prosecution's theories. Under these circumstances, any error in failing to instruct on CALJIC No. 17.01 was harmless. (Compare *People v. Diedrich* (1982) 31 Cal.3d 263, 282-283 [absence of unanimity instruction deemed prejudicial where defendant tendered different defenses to each alleged act of bribery].)

IV

Lastly, Stoddart claims his conviction must be reduced from a felony to a misdemeanor. We are not persuaded.

The punishment for violating section 290 is set forth in subdivision (g). Subdivision (g)(2), which applies here, states: "Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction . . . who subsequently and willfully violates any requirement of this section . . . is guilty of a felony . . . ."

Paragraph (5) provides, "Any person who has ever been adjudicated a sexually violent predator . . . and who fails to verify his or her registration every 90 days as required pursuant to [subdivision (a)(1)(E)], shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year."

Paragraph (7) provides, "Any person who fails to provide proof of residence as required by [subdivision (E)(2)(e)], regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months."

Stoddart was not convicted of violating subdivision (a)(1)(E) or (E)(2)(e). Therefore, the exceptions to felony punishment set forth in paragraphs (5) and (7) are inapt. Nonetheless, he seeks refuge in subdivision (g)(6), which states: "Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to [subdivision (a)(1)(C)] to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months."

Stoddart claims paragraph (6) constitutes an additional exception to the felony punishment rule set forth in subdivision (g)(2). However, that paragraph is actually worded as an enhancement in that its penalties are to be imposed "in addition to" any others that may apply under subdivision (g). (See *People v. Jefferson* (1999) 21 Cal.4th 86, 101 [a sentence enhancement is an additional period of imprisonment that must be added onto the base term].) Because Stoddart was not sentenced under paragraph (6), we need not decide when the additional penalties provided under that paragraph may be used to enhance an offender's sentence. Suffice it to say, paragraph (6) does not constitute an implied exception to subdivision (g)(2), and therefore Stoddart is not entitled to have his sentence reduced to a misdemeanor.

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

ARONSON, J.